

DELEGATE BOTHE: I am asking you the leave to ask him several questions.

DELEGATE JAMES (presiding): Delegate Willoner's time has expired. After we hear the debate, maybe we can have a question period. It seems to the Chair that Delegate Willoner's time has expired.

Let me check with the Parliamentarian on this.

Proceed with the questions. I think that is the simplest thing to do.

Delegate Bothe.

DELEGATE BOTHE: Delegate Willoner, you have indicated that the recommendation for deletion is unsupported by any evidence, and that we may by failing to continue the provision be making major changes in the law and procedure of the State. I wonder if you could state specifically what kinds of changes we could be making, keeping in mind that forty-eight states of the Union would be operating under the same system as we will be if this section is deleted?

DELEGATE JAMES (presiding): Does Delegate Willoner understand the question?

DELEGATE WILLONER: I understand the question. However, there is a premise in the question that I do not agree with, and that is that the forty-eight states in the Union are operating without this provision. I do not know how forty-eight states in the Union are operating without this provision. Perhaps they have managed, when they have eliminated this rule, to have other rules take its place that would have solved the questions I raised.

I have raised these questions to Delegate Bothe and Delegate Moser, and the question was: Where the evidence clearly indicated first degree murder as in the *Green* case, or in *Sharpe and Hanson v. the United States*, is the defendant entitled to instruction on second degree murder and manslaughter? They are not sure.

Secondly, would the Maryland Court reach the same result that the Supreme Court did in the *United States v. Green* case? In that case, in a felony murder situation, the defendant was found not guilty of a first degree murder in a felony murder but guilty of a second degree murder. The Court held that the second degree murder conviction could not stand, and when they tried the defendant again for first degree murder, jeopardy attached.

DELEGATE BOTHE: Is it your opinion, Delegate Willoner, that if this provi-

sion were removed from the state constitution, juries would not be free to render verdicts as they saw fit based on the evidence?

DELEGATE WILLONER: Under our law, the jury has the power to disregard the court's instructions. No one in this body will deny that a man should only be found guilty by the jury and not by the directed verdict of a judge or should have a directed verdict against him.

The judge does not have the power to direct a jury to find him guilty under the present Constitution. I will admit I have not done a complete and thorough research job, but I think the burden is on those who would make a change to do this research job.

It would appear to me this change would raise a problem. If the jury did come in with a verdict that was inconsistent with the facts, could the judge, or the court reverse the decision? For example, if it were robbery and there were not any issues, and they came in with assault with intent to rob, where there was virtually uncontradicted evidence in that, could the verdict stand? I do not know the answer to that. It appeared that it could not stand from the few cases I looked at.

DELEGATE BOTHE: I know that you personally have been both a prosecutor and defense counsel. Is it your personal opinion that juries should be able to decide what the applicable law is?

DELEGATE JAMES (presiding): Delegate Willoner.

DELEGATE WILLONER: There are times when I think that is true. For example, to establish first degree murder in Maryland you must prove there was some premeditation. We have a rather poor definition of premeditated murder in Maryland. The courts have developed it. I can certainly say from the debates we have had today, that maybe judges and lawyers are not so smart about the law after all. But we have this definition of premeditation in Maryland. It can be described roughly as the deliberation it takes to aim a pistol for the second shot. Evidence of this sort can establish first degree murder, but it is very difficult to get a jury to convict on this kind of evidence unless it is a police officer or some person like that who is shot. The Court would instruct that to find the defendant guilty, there must be evidence of premeditation and if the jury found that the defendant took a second shot, the deliberation it took to fire the pistol the